IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4638 OF 2005.

Shri Gopaldas Dayalal Dodhia. ... Petitioner.

V/s.

Shri Kallu Dukhi Choudhary
and others. ... Respondents.

Abhay Patki for the petitioner.

D.B.Sawant i/b. Pankaj A. Thaker
for respondent No.1.

CORAM: V.C.DAGA, J.

DATED: 24th November 2005.

P.C.:

. This petition is at the instance of original defendant No.2 in R.A.E. & R. Suit No.292/863 of 1987 filed by the plaintiff-landlord (respondent No.1 herein) against defendant Nos.1 and 2 who are brothers.

2. The defendant No.1 though suffered a decree of eviction and possession did not challenge the same. Both the courts below held that so far as defendant No.1 - Shri Amrutlal Dayalal Dedhia is concerned, he was in arrears of rent for a period of more than six months and neglected to pay the same in spite of demand and that he was not ready and willing to pay the same.

3. Both the Courts below recorded concurrent findings of fact that original defendant No.1-tenant unlawfully sublet the suit premises in favour of original defendant No.2 i.e. present petitioner. The present petitioner has set up a plea of joint tenancy, which he could not prove though he was permitted to lead evidence in that behalf. The Courts below properly appreciated the evidence on record and held that defendant No.2 (petitioner herein) could not establish joint tenancy.

4. Lastly, the learned counsel for the petitioner submitted that the suit premises is in the slum area. He sought to rely upon the notification published in the gazette of Government of Maharashtra dated 6th January, 1983. In the said notification the schedule of areas given does not include the suit property bearing C.T.S.No.1796/146 and 147 of village Dahisar. The appellate Court has also taken the very same view. Thus, considering the evidence on record and the findings recorded by the Courts below, no fault can be found with the impugned judgment and order.

5. At this juncture, learned counsel appearing for the petitioner sought time to vacate suit premises. Learned counsel for respondent No.1, while reacting to this submission, submitted

that respondent No.1 has no objection for grant of six months period to vacate suit premises. In my view, six months period is a reasonable period. In this view of the matter, subject to furnishing usual undertaking, the petitioner is granted six months time i.e. till 30th June, 2006 to vacate suit premises. Undertaking to be filed within two weeks from today. Failure on the part of the petitioner to furnish usual undertaking within two weeks from today, it would be open to respondent No.1 to execute the decree in accordance with law.

6. Petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)